

**Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 11 of the)	PS Docket No. 15-94
Commission's Rules Regarding the)	
Emergency Alert System)	
)	
Wireless Emergency Alerts)	PS Docket No. 15-91

COMMENTS



I. INTRODUCTION & SUMMARY

The American Cable Association (ACA) hereby files comments in response to the Federal Communications Commission (Commission) Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceedings.¹ We focus our comments on FNPRM proposals concerning the Emergency Alert System (EAS). ACA represents approximately 750 small and medium-sized providers of cable and wireline video service, many of them family-owned businesses with a handful of employees. These

¹ See *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System et al.*, PS Docket No. 15-94 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 18-94 (rel. July 13, 2018).

operators mostly provide service to small towns and rural areas, and typically do so on limited budgets and with modest profits. ACA members take seriously their obligations as EAS Participants, and the majority participate voluntarily in State and local alerting. As companies with strong ties to the communities they serve, ACA members want to ensure that their customers—their neighbors—receive timely information on emergencies that may affect them.

ACA thus applauds the Commission and its Public Safety Homeland Security Bureau (Bureau) for their efforts on many fronts to promote the reliability and operational readiness of EAS, including to address the problem of false EAS alerts. ACA shares the Commission's concern that false alerts weaken confidence in EAS, undermining its value as an authoritative public warning system.

In the Report and Order (Order) accompanying the FNPRM, the Commission sought to prevent and mitigate the dangers of false alerts by imposing reporting, alert authentication, and alert validation requirements on EAS Participants.² ACA encourages the Commission to move forward with additional measures discussed below that could further expedite its awareness of false alerts. ACA believes such measures would advance the Commission's goals far more effectively than expedited reporting from EAS Participants who are involved only in passing through false alerts, which ACA advises the Commission not to mandate. Should the Commission nevertheless decide to adopt such a mandate, it should seek to implement it in a manner that minimizes reporting burdens and encourages robust compliance.

² See Report and Order, ¶¶ 17-31. Under the Order, an EAS Participant is required to notify the Commission by email within 24 hours of discovery that it has transmitted a false alert. The Order confirms that "discovery" equates to "actual knowledge." See *id.*, ¶ 18.

II. THERE ARE ADDITIONAL MEASURES THE COMMISSION SHOULD PURSUE TO ENHANCE ITS ACCESS TO INFORMATION ON FALSE ALERTS

To build upon the reporting obligations already established for EAS Participants, ACA encourages the Commission to move forward with additional measures raised in or suggested by the FNPRM that could further enhance its access to information on false alerts.

First, the FNPRM acknowledges the role of State and local authorities in “develop[ing] and memorializ[ing] standard operating procedures for responding to false alerts within their jurisdictions.”³ As the Commission explores ways to “aid States and localities” in carrying out this role,⁴ it should also encourage such authorities to share information directly with the Commission on alerts originating within their jurisdictions. State and local authorities are very well positioned to notify the Commission of a false alert in the first instance and to keep it apprised of the steps being taken in response. To promote consistent access to such information, the Commission should encourage States to specify in their EAS Plans that the plan of action in response to a false alert includes notifying the Commission immediately.

Second, the Commission should create an online portal for members of the public to share information about false alerts voluntarily.⁵ Crowdsourced reports, which are likely to start pouring in before EAS Participants determine an alert to be false,⁶ could greatly expedite the Commission’s awareness of false alerts. Such reporting

³ See FNPRM, ¶ 43 (citing the Bureau Report at 25).

⁴ See *id.*, ¶ 43

⁵ See *id.*, ¶ 41.

⁶ Indeed, many EAS Participants learn that an alert they passed through was false from various public sources, including their customers, local television news and radio, and the State Emergency Communications Committee.

could also help the Commission understand how the public received a false alert and how quickly and effectively the incident was managed.

Third, the Commission should modify the 24-hour reporting deadline established in the Order to require expedited reporting from EAS Participants involved directly in the origination of a false alert.⁷ This approach would properly impose an increased burden on those EAS Participants, if any, that played some role in a false alert coming into being. From EAS Participants who only pass through false alerts that originate elsewhere, the Commission should expressly *encourage* reporting of false alerts sooner if possible, while keeping the 24-hour deadline in place as a backstop. Relying on cooperation rather than mandates to obtain information from such EAS Participants in the midst of a false alert would be in line with the collaborative spirit that drives EAS, particularly at the State and local levels.

III. “REAL TIME” REPORTING MANDATES FOR EAS PARTICIPANTS ARE UNWARRANTED, BUT ANY SUCH MANDATES SHOULD BE IMPLEMENTED A MANNER THAT MINIMIZES BURDENS AND ENCOURAGES ROBUST COMPLIANCE

As one potential mechanism to improve its access to information on false alerts, the Commission seeks comment on requiring EAS Participants to report false alerts “within five minutes of discovery.” While ACA supports imposing an expedited reporting deadline on EAS Participants involved in the origination of a false alert, and it recommends that the Commission encourage other EAS Participants to report false

⁷ The expedited reporting obligation could apply where an EAS Participant’s EAS equipment originates a false alert, including as the result of a malicious intrusion, or where the Participant’s improper transmission of an EAS audio message (e.g., during a radio or television broadcast) triggers downstream EAS equipment to transmit a false alert. Where a false alert originates from a State or local alerting authority, there would be no expedited reporting obligation for any EAS Participant.

alerts as soon as possible, the Commission should not adopt a general mandate that EAS Participants report false alert transmissions “within five minutes of discovery.”

As an initial matter, it is important to keep in mind the functional role that EAS Participants play in EAS. Broadly speaking, EAS Participants’ role is to provide the means for Federal, State and local authorities to communicate with the public in times of emergency. Performing this role effectively requires EAS Participants to receive and transmit alerts without delay—and hence, without pausing to verify their accuracy. As a general matter, an EAS Participant does nothing wrong when it passes through an alert that is later determined to be false. In fact, an EAS Participant’s transmission of a false alert may be a sign that the Participant is performing its duties as intended and that its equipment is functioning properly.⁸ While the circumstances of false alerts vary, EAS Participants do not bear any culpability in general for the proliferation of false alerts.

Indeed, there is no capability built into EAS that an EAS Participant could rely on to distinguish all false alerts from all genuine ones.⁹ The falseness of an alert is a fact-specific determination, one that is not always or even generally apparent on the face of the alert. As the Commission acknowledges, EAS Participants that transmit false alerts “may not know” that they have done so.”¹⁰ In some cases, an EAS Participant learns that an alert it has transmitted is false only upon receiving confirmation directly from the alert originator. The timeline and methods by which an alert originator discloses to an

⁸ See, e.g., Federal Communications Commission, Public Safety and Homeland Security Bureau, Report and Recommendations: Hawaii Emergency Management January 13, 2018 False Alert at 18 n.90 (rel. Apr. 10, 2018) (noting that Hawaii EAS Participants whose equipment was not configured to pass through automatically the false ballistic missile alert or subsequent corrective alert have made adjustments so that such alerts would pass through in the future, consistent with the Hawaii EAS Plan).

⁹ The alert authentication and validation measures required under the Order will enable EAS Participants to screen out false alerts, but only in specified cases where the alert is defective on its face.

¹⁰ See Order, ¶ 18.

EAS Participant that it has issued a false alert will vary from incident to incident, State to State, and locality to locality, and are beyond the control of the EAS Participant. In some cases, one or more EAS Participants may not hear from the alert originator at all.

Given these operational realities, false alert reports filed by EAS Participants within “five minutes of discovery” would not reliably inform the Commission of false alerts any more quickly than it learns of false alerts today. Even with a five-minute reporting timeline in place, the Commission will likely have learned of a false alert through social media, from traditional news outlets, or directly from the alert originator by the time an EAS Participant reports it. And by adopting ACA’s proposal that the Commission create an online portal for members of the public to share information about false alerts voluntarily, the Commission will have a mechanism for receiving this information more quickly and more directly.

In addition, it is unclear how the proposed reports from EAS Participants would contribute meaningfully to the Commission’s situational awareness in the aftermath of an alert. The immediate steps taken to rectify a false alert—such as issuing a correction over EAS and the Wireless Emergency Alerts system—are unlikely to depend on knowing precisely which EAS Participants transmitted the false alert. While the Commission may find EAS Participants’ reports valuable in analyzing or investigating an alert well after the fact to help “identify and mitigate problems with the EAS” in the future,¹¹ receiving reports within 24 hours should be more than sufficient for such purposes.

¹¹ See FNPRM, ¶ 40.

Furthermore, requiring EAS Participants to file reports in the midst of a false alert incident would divert resources from addressing customer concerns and from other efforts to redress the alert, particularly when the false alert is of the kind that risks causing public harm, which would be particularly burdensome for smaller EAS Participants that operate with minimal staff. Finally, the more significant the obligations attached to State and local EAS alerting, the less likely it is that EAS Participants will participate robustly in these voluntary alerting programs. While a reporting scheme with demonstrable benefits could potentially offset these costs, the reporting mandates proposed in the FNPRM would not.

If the Commission nonetheless decides to adopt heightened reporting obligations for those EAS Participants that play no role in originating a false alert, the Commission should implement the reporting in a manner that minimizes burdens and that encourages robust compliance. First, ACA strongly advises the Commission to reconsider the proposed five-minute timeframe for reporting, which is unrealistically brief. Nowhere in the FNPRM does the Commission explain or provide any justification for such a truncated reporting timeline, and the Commission would be remiss to adopt it in the absence of compelling record support.

In addition, the Commission should continue to use email as the mechanism for all false alert reporting it may require from EAS Participants.¹² Because false alerts are rare and unpredictable, it would be unwise to require false alert reporting through a reporting mechanism likely to be unfamiliar to the individual providing the report. Even

¹² See Order, ¶ 18 (directing EAS Participants to submit false alert reports by email at FCCOPS@fcc.gov).

the EAS Test Reporting System (ETRS) is a platform that EAS Participants engage with infrequently and only in the context of planned tests. For the limited reporting contemplated in the FNPRM, ETRS is unlikely to offer any advantages over email.

Finally, the Commission should make clear that any false alert reporting requirements it adopts are based on its interest in obtaining timely information from those entities able to provide it, not on any intent to hold an EAS Participant accountable for the mere fact that a false alert has passed through its system. To that end, the Commission should forbear from aggressive enforcement of any false alert reporting rules it may adopt. Those EAS Participants that make a good-faith effort to timely report false alerts that pass through their systems should not be held liable for an isolated failure to report on a false alert in compliance with the rules. Only if the Commission becomes aware of a *pattern or trend* by an EAS Participant in not reporting discovered false alerts should it be allowed to open an enforcement inquiry with the EAS participant.

IV. THE COMMISSION SHOULD NOT ADOPT LOCKOUT REPORTING REQUIREMENTS

While the FNPRM focuses on false EAS alerts, it asks generally about “lockout reporting.” As ACA has previously observed, EAS-related set top box lockouts have declined sharply over the last twenty years and are extremely rare today. Moreover, cable operators have strong incentives to resolve lockouts as quickly as possible and to prevent them from happening in the first place.¹³ The FNPRM does not explain in any detail the lockout reporting the Commission may have in mind, or what purpose the

¹³ See Comments of ACA on Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System et al., PS Docket No. 15-94 et al., at 24-25 (filed June 8, 2016).

reporting would serve. The Commission should therefore not move forward with any such requirements.

V. CONCLUSION

ACA appreciates the opportunity to comment on the FNPRM, and encourages the Commission to take its comments into consideration as it considers next steps in this proceeding.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "B. Hurley", is positioned above the typed name and title of Brian Hurley.

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